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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

RICK WOODS, Individually and On Behalf of All
Others Similarly Situated,

Plaintiff,

v.

GOOGLE INC.,

Defendant.

Case No. 11-cv-1263-EJD

STIPULATED PROTECTIVE ORDER FOR
LITIGATION INVOLVING HIGHLY
SENSITIVE CONFIDENTIAL
INFORMATION AND/OR TRADE
SECRETS **(MODIFIED BY THE COURT)**

1. PURPOSES AND LIMITATIONS

Disclosure and discovery activity in this action are likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this Order does not confer blanket protections on all disclosures or responses to discovery and that the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles. The parties further acknowledge, as set forth in Section 14.4, below, that this Stipulated Protective Order does not entitle them to file confidential information under seal; Civil Local Rule 79-5 and General Order 62 set forth the procedures that must be followed and the standards that will be applied when a party seeks permission from the court to file material under seal.

2. DEFINITIONS

2.1 Challenging Party: a Party or Non-Party that challenges the designation of information or items under this Order.

2.2 "CONFIDENTIAL" Information or Items: information (regardless of how it is generated, stored or maintained) or tangible things that qualify for protection under Federal Rule of Civil Procedure 26(c), including, but not limited to, all information or material produced for or disclosed to a Receiving Party that a Designating Party, including any Party and any Non-Party producing information or material voluntarily or pursuant to a subpoena or court order, reasonably and in good faith considers to constitute confidential technical, sales, marketing, financial, or business information, other commercially sensitive information, or AdWords account information of the named plaintiffs, however embodied, that has been so designated by the Designating Party.

2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as well as their support staff).

2.4 Designated House Counsel: House Counsel who seek access to "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" information in this matter.

1 2.5 Designating Party: a Party or Non-Party that designates information or items that it
2 produces in disclosures or in responses to discovery as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL
3 – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE”.

4 2.6 Disclosure or Discovery Material: all items or information, regardless of the medium or
5 manner in which it is generated, stored, or maintained (including, among other things, testimony, transcripts,
6 and tangible things), that are produced or generated in disclosures or responses to discovery in this matter.

7 2.7 Expert: a person with specialized knowledge or experience in a matter pertinent to the
8 litigation who (1) has been retained by a Party or its Counsel to serve as an expert witness or as a consultant
9 in this action, (2) is not a past or current employee of a Party or of a Party’s competitor, and (3) at the time
10 of retention, is not anticipated to become an employee of a Party or of a Party’s competitor.

11 2.8 “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” Information or Items:
12 extremely sensitive “Confidential Information or Items,” disclosure of which to another Party or Non-Party
13 would create a substantial risk of serious harm that could not be avoided by less restrictive means, including,
14 but not limited to, proprietary marketing, financial, sales, web traffic, research and development, or
15 technical data or information; AdWords account information of putative class members, or other
16 commercially sensitive competitive information, including, without limitation, confidential information
17 obtained from a nonparty pursuant to a current Nondisclosure Agreement (“NDA”); information relating to
18 future products or services not yet commercially released; strategic plans; and settlement agreements or
19 settlement communications; the disclosure of which is likely to cause harm to the competitive position of
20 the Designating Party, that has been so designated by the Designating Party. The parties reserve the right to
21 challenge the propriety of any such designation, regardless of the above-listed categories, upon review of
22 designated material.

23 2.9 “HIGHLY CONFIDENTIAL – SOURCE CODE” Information or Items: extremely
24 sensitive “Confidential Information or Items” representing computer code and associated comments and
25 revision histories, formulas, engineering specifications, or schematics that define or otherwise describe in
26 detail the algorithms or structure of software or hardware designs, disclosure of which to another Party or
27 Non-Party would create a substantial risk of serious harm that could not be avoided by
28 less restrictive means.

1 2.10 House Counsel: attorneys who are employees of a Party. House Counsel does not include
2 Outside Counsel of Record or any other outside counsel.

3 2.11 Non-Party: any natural person, partnership, corporation, association, or other legal entity
4 not named as a Party to this action.

5 2.12 Outside Counsel of Record: attorneys who are not employees of a Party but are retained to
6 represent or advise a Party and have appeared in this action on behalf of that Party or attorneys and staff
7 who are affiliated with a law firm which has appeared on behalf of that Party (including contract review
8 attorneys).

9 2.13 Party: any party to this action, including all of its officers, directors, employees, consultants,
10 retained experts, and Outside Counsel of Record (and their support staffs).

11 2.14 Producing Party: a Party or Non-Party that produces Disclosure or Discovery Material in
12 this action.

13 2.15 Professional Vendors: persons or entities that provide litigation support services (e.g.,
14 photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing, storing, or
15 retrieving data in any form or medium) and their employees and subcontractors.

16 2.16 Protected Material: any Disclosure or Discovery Material that is designated as
17 “CONFIDENTIAL” or as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or as “HIGHLY
18 CONFIDENTIAL – SOURCE CODE.”

19 2.17 Receiving Party: a Party that receives Disclosure or Discovery Material from a Producing
20 Party.

21 3. SCOPE

22 The protections conferred by this Stipulation and Order cover not only Protected Material (as
23 defined above), but also (1) any information copied or extracted from Protected Material; (2) all copies,
24 excerpts, summaries, or compilations of Protected Material; and (3) any testimony, conversations, or
25 presentations by Parties or their Counsel that might reveal Protected Material. However, the protections
26 conferred by this Stipulation and Order do not cover the following information: (a) any information that is in
27 the public domain at the time of disclosure to a Receiving Party or becomes part of the public domain after
28 its disclosure to a Receiving Party as a result of publication not involving a violation of this Order, including

1 becoming part of the public record through trial or otherwise; and (b) any information known to the
 2 Receiving Party prior to the disclosure or obtained by the Receiving Party after the disclosure from a source
 3 who obtained the information lawfully and under no obligation of confidentiality to the Designating Party.
 4 Any use of Protected Material at trial shall be governed by a separate agreement or order.

5 4. DURATION

6 Even after final disposition of this litigation, the confidentiality obligations imposed by this Order
 7 shall remain in effect until a Designating Party agrees otherwise in writing or a court order otherwise
 8 directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims and defenses in this
 9 action, with or without prejudice; and (2) final judgment herein after the completion and exhaustion of all
 10 appeals, rehearings, remands, trials, or reviews of this action, including the time limits for filing any motions
 11 or applications for extension of time pursuant to applicable law.

For a period of six months after
 final disposition of this litigation, this
 court will retain jurisdiction to
 enforce the terms of this order.

12 5. DESIGNATING PROTECTED MATERIAL

13 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party or Non-
 14 Party that designates information or items for protection under this Order must take care to limit any such
 15 designation to specific material that qualifies under the appropriate standards. To the extent it is practical to
 16 do so, the Designating Party must designate for protection only those parts of material, documents, items, or
 17 oral or written communications that qualify – so that other portions of the material, documents, items, or
 18 communications for which protection is not warranted are not swept unjustifiably within the ambit of this
 19 Order.

20 Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown to be
 21 clearly unjustified or that have been made for an improper purpose (e.g., to unnecessarily encumber or
 22 retard the case development process or to impose unnecessary expenses and burdens on other parties)
 23 expose the Designating Party to sanctions.

24 If it comes to a Designating Party's attention that information or items that it designated for
 25 protection do not qualify for protection at all or do not qualify for the level of protection initially asserted,
 26 that Designating Party must promptly notify all other parties that it is withdrawing the mistaken designation.

27 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order (see, e.g.,
 28 second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered, Disclosure or Discovery

1 Material that qualifies for protection under this Order must be clearly so designated before the
2 material is disclosed or produced.

3 Designation in conformity with this Order requires:

4 (a) for information in documentary form (e.g., paper or electronic documents, but excluding
5 transcripts of depositions or other pretrial or trial proceedings), that the Producing Party affix the legend
6 “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY
7 CONFIDENTIAL – SOURCE CODE” to each page that contains Protected Material. If only a portion or
8 portions of the material on a page qualifies for protection, the Producing Party also must clearly identify the
9 protected portion(s) (e.g., by making appropriate markings in the margins) and must specify, for each
10 portion, the level of protection being asserted.

11 A Party or Non-Party that makes original documents or materials available for inspection need not
12 designate them for protection until after the inspecting Party has indicated which material it would like
13 copied and produced. During the inspection and before the designation, all of the material made available
14 for inspection shall be deemed “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.” After the
15 inspecting Party has identified the documents it wants copied and produced, the Producing Party must
16 determine which documents, or portions thereof, qualify for protection under this Order. Then, before
17 producing the specified documents, the Producing Party must affix the appropriate legend
18 (“CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY
19 CONFIDENTIAL – SOURCE CODE”) to each page that contains Protected Material. If only a portion or
20 portions of the material on a page qualifies for protection, the Producing Party also must clearly identify the
21 protected portion(s) (e.g., by making appropriate markings in the margins) and must specify, for each
22 portion, the level of protection being asserted.

23 (b) for testimony given in deposition or in other pretrial or trial proceedings, that the
24 Designating Party identify on the record, before the close of the deposition, hearing, or other proceeding, all
25 protected testimony and specify the level of protection being asserted. When it is impractical to identify
26 separately each portion of testimony that is entitled to protection and it appears that substantial portions of
27 the testimony may qualify for protection, the Designating Party may invoke on the record (before the
28 deposition, hearing, or other proceeding is concluded) a right to have up to 21 days to identify the specific

1 portions of the testimony as to which protection is sought and to specify the level of protection being
 2 asserted. Only those portions of the testimony that are appropriately designated for protection within the 21
 3 days shall be covered by the provisions of this Stipulated Protective Order. Alternatively, a Designating
 4 Party may specify, at the deposition or up to 21 days afterwards if that period is properly invoked, that the
 5 entire transcript shall be treated as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’
 6 EYES ONLY.”

7 Parties shall give the other parties notice if they reasonably expect a deposition, hearing or other
 8 proceeding to include Protected Material so that the other parties can ensure that only authorized individuals
 9 who have signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A) are present at those
 10 proceedings. The use of a document as an exhibit at a deposition shall not in any way affect its designation
 11 as “CONFIDENTIAL” or “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY.”

12 Transcripts containing Protected Material shall have an obvious legend on the title page that the
 13 transcript contains Protected Material, and the title page shall be followed by a list of all pages (including
 14 line numbers as appropriate) that have been designated as Protected Material and the level of protection
 15 being asserted by the Designating Party. The Designating Party shall inform the court reporter of these
 16 requirements. Any transcript that is prepared before the expiration of a 21-day period for designation shall
 17 be treated during that period as if it had been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’
 18 EYES ONLY” in its entirety unless otherwise agreed. After the expiration of that period, the transcript shall
 19 be treated only as actually designated.

20 (c) for information produced in some form other than documentary and for any other
 21 tangible items, that the Producing Party affix in a prominent place on the exterior of the container or
 22 containers in which the information or item is stored the legend “CONFIDENTIAL” or “HIGHLY
 23 CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE”.
 24 If only a portion or portions of the information or item warrant protection, the Producing Party, to the extent
 25 practicable, shall identify the protected portion(s) and specify the level of protection being asserted.

26 (d) in all load files relating to Disclosures or Discovery Material, the Producing Party shall
 27 include a data field within such load files reserved for confidentiality designations made pursuant to this
 28 Order and shall include within that data field any designation made (“CONFIDENTIAL” or “HIGHLY

CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY CONFIDENTIAL – SOURCE CODE”) pursuant to this Order.

5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate qualified information or items does not, standing alone, waive the Designating Party’s right to secure protection under this Order for such material. Upon timely correction of a designation, the Receiving Party must make reasonable efforts to assure that the material is treated in accordance with the provisions of this Order.

6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of confidentiality at any time. Unless a prompt challenge to a Designating Party’s confidentiality designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to challenge a confidentiality designation by electing not to mount a challenge promptly after the original designation is disclosed.

6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process by providing written notice of each designation it is challenging and describing the basis for each challenge. To avoid ambiguity as to whether a challenge has been made, the written notice must recite that the challenge to confidentiality is being made in accordance with this specific paragraph of the Protective Order. The parties shall attempt to resolve each challenge in good faith and must begin the process by conferring directly (in voice to voice dialogue; other forms of communication are not sufficient) within 14 days of the date of service of notice. In conferring, the Challenging Party must explain the basis for its belief that the confidentiality designation was not proper and must give the Designating Party an opportunity to review the designated material, to reconsider the circumstances, and, if no change in designation is offered, to explain the basis for the chosen designation. A Challenging Party may proceed to the next stage of the challenge process only if it has engaged in this meet and confer process first or establishes that the Designating Party is unwilling to participate in the meet and confer process in a timely manner.

6.3 Judicial Intervention. If the Parties cannot resolve a challenge without court intervention, **parties shall comply with the undersigned's Standing Order re Civil Discovery** the Designating Party shall file and serve a motion to retain confidentiality under Civil Local Rule 7 (and in **Disputes** compliance with Civil Local Rule 79-5 and General Order 62, if applicable) within 21 days of the initial

notice of challenge or within 14 days of the parties agreeing that the meet and confer process will not resolve their dispute, whichever is earlier. ~~Each such motion must be accompanied by a competent declaration affirming that the movant has complied with the meet and confer requirements imposed in the preceding paragraph[^]. Failure by the Designating Party to make such a motion including the required declaration within 21 days (or 14 days, if applicable) shall automatically waive the confidentiality designation for each challenged designation. In addition, the Challenging Party may file a motion to challenge a confidentiality designation at any time if there is good cause for doing so, including a challenge to the designation of a deposition transcript or any portions thereof. Any motion brought pursuant to this provision must be accompanied by a competent declaration affirming that the movant has complied with the meet and confer requirements imposed by the preceding paragraph.~~

Any Discovery Dispute Joint Report ("DDJR") shall
affirm that
have been satisfied
seek judicial intervention
seek relief with
respect to

The burden of persuasion in any such challenge proceeding shall be on the Designating Party. Frivolous challenges and those made for an improper purpose (e.g., to harass or impose unnecessary expenses and burdens on other parties) may expose the Challenging Party to sanctions. Unless the Designating Party has waived the confidentiality designation by failing to ~~file a motion~~ to retain confidentiality as described above, all parties shall continue to afford the material in question the level of protection to which it is entitled under the Producing Party's designation until the court rules on the challenge.

7. ACCESS TO AND USE OF PROTECTED MATERIAL

7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or produced by another Party or by a Non-Party in connection with this case only for prosecuting, defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to the categories of persons and under the conditions described in this Order. When the litigation has been terminated, a Receiving Party must comply with the provisions of section 15 below (FINAL DISPOSITION).

Protected Material must be stored and maintained by a Receiving Party at a location and in a secure manner that ensures that access is limited to the persons authorized under this Order.

7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered by the court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or item designated "CONFIDENTIAL" only to:

1 (a) the Receiving Party's Outside Counsel of Record in this action, as well as employees of
 2 said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for this
 3 litigation and who have signed the "Acknowledgment and Agreement to Be Bound" that is attached hereto
 4 as Exhibit A;

5 (b) the Receiving Party (if an individual) and the officers, directors, and employees
 6 (including House Counsel) of the Receiving Party (1) to whom disclosure is reasonably necessary for this
 7 litigation, (2) who has signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A), and (3) for
 8 Designated House Counsel, as to whom the procedures set forth in paragraph 7.4(a)(1), below, have been
 9 followed;

10 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is
 11 reasonably necessary for this litigation and who have signed the "Acknowledgment and Agreement to Be
 12 Bound" (Exhibit A);

13 (d) the court and its personnel;

14 (e) court reporters and their staff, professional jury or trial consultants, and Professional
 15 Vendors to whom disclosure is reasonably necessary for this litigation and who have signed the
 16 "Acknowledgment and Agreement to Be Bound" (Exhibit A);

17 (f) during their depositions, witnesses in the action to whom disclosure is reasonably
 18 necessary and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A), unless
 19 otherwise agreed by the Designating Party or ordered by the court; notwithstanding the foregoing,
 20 employees of the Producing Party need not sign the "Acknowledgment and Agreement to be Bound"
 21 (Exhibit A) prior to disclosure of CONFIDENTIAL information during their depositions. Pages of
 22 transcribed deposition testimony or exhibits to depositions that reveal Protected Material must be separately
 23 bound by the court reporter and may not be disclosed to anyone except as permitted under this Stipulated
 24 Protective Order;

25 (g) the author or recipient of a document containing the information or a custodian or other
 26 person who otherwise possessed or knew the information.

27 7.3 Disclosure of "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" and
 28 "HIGHLY CONFIDENTIAL – SOURCE CODE" Information or Items. Unless otherwise ordered by the

1 court or permitted in writing by the Designating Party, a Receiving Party may disclose any information or
2 item designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY
3 CONFIDENTIAL – SOURCE CODE” only to:

4 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as employees of
5 said Outside Counsel of Record to whom it is reasonably necessary to disclose the information for this
6 litigation and who have signed the “Acknowledgment and Agreement to Be Bound” that is attached hereto
7 as Exhibit A;

8 (b) the Receiving Party (where the Receiving Party is the Plaintiff Party) and, where
9 applicable, the officers, directors, and employees (including Designated House Counsel) of the Receiving
10 Party (1) who has no involvement in competitive decision-making, (2) to whom disclosure is reasonably
11 necessary for this litigation, (3) who has signed the “Acknowledgment and Agreement to Be Bound”
12 (Exhibit A), and (4) for Designated House Counsel, as to whom the procedures set forth in paragraph
13 7.4(a)(1), below, have been followed;

14 (c) Experts (as defined in this Order) of the Receiving Party (1) to whom disclosure is
15 reasonably necessary for this litigation, (2) who have signed the “Acknowledgment and Agreement to Be
16 Bound” (Exhibit A), and (3) as to whom the procedures set forth in paragraph 7.4(a)(2), below, have been
17 followed;

18 (d) the court and its personnel;

19 (e) court reporters and their staff, professional jury or trial consultants, mock jurors, and
20 Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have signed the
21 “Acknowledgment and Agreement to Be Bound” (Exhibit A);

22 (f) the author or recipient of a document containing the information or a custodian or other
23 person who otherwise possessed or knew the information; and

24 (g) during their depositions, employees of the Producing Party to whom disclosure is
25 reasonably necessary.
26
27
28

1 7.4 Procedures for Approving or Objecting to Disclosure of “HIGHLY CONFIDENTIAL –
 2 ATTORNEYS’ EYES ONLY” information to Designated House Counsel and Experts or “HIGHLY
 3 CONFIDENTIAL – SOURCE CODE” Information or Items to Experts.¹

4 (a)(1) Unless otherwise ordered by the court or agreed to in writing by the Designating
 5 Party, a Party that seeks to disclose to Designated House Counsel any information or item that has been
 6 designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” pursuant to paragraph 7.3(b) first
 7 must make a written request to the Designating Party that (1) sets forth the full name of the Designated
 8 House Counsel and the city and state of his or her residence, and (2) describes the Designated House
 9 Counsel’s current and reasonably foreseeable future primary job duties and responsibilities in sufficient
 10 detail to determine if House Counsel is involved, or may become involved, in any competitive decision-
 11 making.

12 (a)(2) Unless otherwise ordered by the court or agreed to in writing by the Designating
 13 Party, a Party that seeks to disclose to an Expert (as defined in this Order) any information or item that has
 14 been designated “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” or “HIGHLY
 15 CONFIDENTIAL – SOURCE CODE” pursuant to paragraph 7.3(c) first must make a written request to the
 16 Designating Party that (1) identifies the general categories of “HIGHLY CONFIDENTIAL –
 17 ATTORNEYS’ EYES ONLY” and/or “HIGHLY CONFIDENTIAL – SOURCE CODE” information that
 18 the Receiving Party seeks permission to disclose to the Expert, (2) sets forth the full name of the Expert and
 19 the city and state of his or her primary residence, (3) attaches a copy of the Expert’s current resume, (4)
 20 identifies the Expert’s current employer(s), (5) identifies each person or entity from whom the Expert has
 21 received compensation or funding for work in his or her areas of expertise or to whom the Expert has
 22 provided professional services, including in connection with a litigation, at any time during the preceding
 23 five years,² and (6) identifies (by name and number of the case, filing date, and location of court) any
 24

25
 26 ¹ [deleted]

27 ² If the Expert believes any of this information is subject to a confidentiality obligation to a third-party, then the Expert should
 28 provide whatever information the Expert believes can be disclosed without violating any confidentiality agreements, and the Party
 seeking to disclose to the Expert shall be available to meet and confer with the Designating Party regarding any such engagement.

litigation in connection with which the Expert has offered expert testimony, including through a declaration, report, or testimony at a deposition or trial, during the preceding five years.

(b) A Party that makes a request and provides the information specified in the preceding respective paragraphs may disclose the subject Protected Material to the identified Designated House Counsel or Expert unless, within 14 days of delivering the request, the Party receives a written objection from the Designating Party. Any such objection must set forth in detail the grounds on which it is based.

(c) A Party that receives a timely written objection must meet and confer with the Designating Party (through direct voice to voice dialogue) to try to resolve the matter by agreement within seven days of the written objection. If no agreement is reached, the ~~Party seeking to make the disclosure to~~ **parties shall comply with the undersigned's Standing Order re Civil Discovery Disputes.** ~~Designated House Counsel or the Expert may file a motion as provided in Civil Local Rule 7 (and in compliance with Civil Local Rule 79-5 and General Order 62, if applicable) seeking permission from the court to do so.~~ **DDJR** Any such motion must describe the circumstances with specificity, set forth in detail the reasons why the disclosure to Designated House Counsel or the Expert is reasonably necessary, assess the risk of harm that the disclosure would entail, and suggest any additional means that could be used to reduce that risk. ~~In addition, any such motion must be accompanied by a competent declaration describing the parties' efforts to resolve the matter by agreement (i.e., the extent and the content of the meet and confer discussions) and setting forth the reasons advanced by the Designating Party for its refusal to approve the disclosure.~~

(d) In any such proceeding, the Party opposing disclosure to Designated House Counsel or the Expert shall bear the burden of proving that the risk of harm that the disclosure would entail (under the safeguards proposed) outweighs the Receiving Party's need to disclose the Protected Material to its Designated House Counsel or Expert.

8. OMITTED

9. SOURCE CODE

(a) To the extent production of source code becomes necessary in this case, a Producing Party may designate source code as "HIGHLY CONFIDENTIAL - SOURCE CODE" if it comprises or includes confidential, proprietary or trade secret source code.

1 (b) Protected Material designated as “HIGHLY CONFIDENTIAL – SOURCE CODE”
2 shall be subject to all of the protections afforded to “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES
3 ONLY” information, and may be disclosed only to the individuals to whom “HIGHLY CONFIDENTIAL –
4 ATTORNEYS’ EYES ONLY” information may be disclosed, as set forth in Paragraphs 7.3 and 7.4, with
5 the exception of Designated House Counsel.

6 (c) Any source code produced in discovery shall be made available for inspection in a
7 format through which it could be reasonably reviewed and searched during normal business hours or other
8 mutually agreeable times at a location that is reasonably convenient for the Receiving Party and any experts
9 to whom the source code may be disclosed. The source code shall be made available for inspection on a
10 secured computer in a secured room without Internet access or network access to other computers, and the
11 Receiving Party shall not copy, remove, or otherwise transfer any portion of the source code onto any
12 recordable media or recordable device. The Producing Party may visually monitor the activities of the
13 Receiving Party’s representatives during any source code review, but only to ensure that there is no
14 unauthorized recording, copying, or transmission of the source code.

15 (d) The Receiving Party may request paper copies of limited portions of source code
16 that are reasonably necessary for the preparation of court filings, pleadings, expert reports, or other papers,
17 or for deposition or trial, but shall not request paper copies for the purposes of reviewing the source code
18 other than electronically as set forth in paragraph (c) in the first instance. The Producing Party shall provide
19 all such source code in paper form including bates numbers and the label “HIGHLY CONFIDENTIAL -
20 SOURCE CODE.” The Producing Party may challenge the amount of source code requested in hard copy
21 form pursuant to the dispute resolution procedure and timeframes set forth in Paragraph 6 whereby the
22 Producing Party is the “Challenging Party” and the Receiving Party is the “Designating Party” for purposes
23 of dispute resolution.

24 (e) The Receiving Party shall maintain a record of any individual who has inspected
25 any portion of the source code in electronic or paper form. The Receiving Party shall maintain all paper
26 copies of any printed portions of the source code in a secured, locked area. The Receiving Party shall not
27 create any electronic or other images of the paper copies and shall not convert any of the information
28 contained in the paper copies into any electronic format. The Receiving Party shall only make additional

1 paper copies if such additional copies are (1) necessary to prepare court filings, pleadings, or other papers
 2 (including a testifying Expert's expert report), (2) necessary for deposition, or (3) otherwise necessary for
 3 the preparation of its case. Unless marked as an exhibit during a deposition, any paper copies used during a
 4 deposition shall be retrieved by the Producing Party at the end of each day and must not be given to or left
 5 with a court reporter or any other individual.

6 10. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
 7 LITIGATION

8 If a Party is served with a subpoena or a court order issued in other litigation that compels
 9 disclosure of any information or items designated in this action as "CONFIDENTIAL" or "HIGHLY
 10 CONFIDENTIAL – ATTORNEYS' EYES ONLY" or "HIGHLY CONFIDENTIAL – SOURCE CODE"
 11 that Party must:

12 (a) promptly notify in writing the Designating Party. Such notification shall include a copy
 13 of the subpoena or court order;

14 (b) promptly notify in writing the party who caused the subpoena or order to issue in the
 15 other litigation that some or all of the material covered by the subpoena or order is subject to this Protective
 16 Order. Such notification shall include a copy of this Stipulated Protective Order; and

17 (c) cooperate with respect to all reasonable procedures sought to be pursued by the
 18 Designating Party whose Protected Material may be affected.³

19 If the Designating Party timely seeks a protective order, the Party served with the subpoena
 20 or court order shall not produce any information designated in this action as "CONFIDENTIAL" or
 21 "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES ONLY" or "HIGHLY CONFIDENTIAL – SOURCE
 22 CODE" before a determination by the court from which the subpoena or order issued, unless the Party has
 23 obtained the Designating Party's permission. The Designating Party shall bear the burden and expense of
 24 seeking protection in that court of its confidential material – and nothing in these provisions should be

25
 26
 27 ³ The purpose of imposing these duties is to alert the interested parties to the existence of this Protective Order and to afford the
 28 Designating Party in this case an opportunity to try to protect its confidentiality interests in the court from which the subpoena or
 order issued.

1 construed as authorizing or encouraging a Receiving Party in this action to disobey a lawful directive from
 2 another court. **See Paragraph 16.**

3 11. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS
 4 LITIGATION

5 (a) The terms of this Order are applicable to information produced by a Non-Party in
 6 this action and designated as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – ATTORNEYS' EYES
 7 ONLY" or "HIGHLY CONFIDENTIAL – SOURCE CODE". Such information produced by Non-Parties in
 8 connection with this litigation is protected by the remedies and relief provided by this Order. Nothing in
 9 these provisions should be construed as prohibiting a Non-Party from seeking additional protections.

10 (b) In the event that a Party is required, by a valid discovery request, to produce a Non-
 11 Party's confidential information in its possession, and the Party is subject to an agreement with the Non-
 12 Party not to produce the Non-Party's confidential information, then the Party shall:

13 1. promptly notify in writing the Requesting Party and the Non-Party that some or all
 14 of the information requested is subject to a confidentiality agreement with a Non-Party;

15 2. promptly provide the Non-Party with a copy of the Stipulated Protective Order in
 16 this litigation, the relevant discovery request(s), and a reasonably specific description of the information
 17 requested; and

18 3. make the information requested available for inspection by the Non-Party.

19 (c) If the Non-Party fails to object or seek a protective order from this court within 14
 20 days of receiving the notice and accompanying information, the Receiving Party may produce the Non-
 21 Party's confidential information responsive to the discovery request. If the Non-Party timely seeks a
 22 protective order, the Receiving Party shall not produce any information in its possession or control that is
 23 subject to the confidentiality agreement with the Non-Party before a determination by the court.⁴ Absent a
 24 court order to the contrary, the Non-Party shall bear the burden and expense of seeking protection in this
 25 court of its Protected Material. **See Paragraph 16.**

26
 27 ⁴ The purpose of this provision is to alert the interested parties to the existence of confidentiality rights of a Non-Party and to afford
 28 the Non-Party an opportunity to protect its confidentiality interests in this court.

12. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Stipulated Protective Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) request such person or persons to execute the "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit A.

13. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

When a Producing Party gives notice to Receiving Parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established in an e-discovery order that provides for production without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), insofar as the parties reach an agreement on the effect of disclosure of a communication or information covered by the attorney-client privilege or work product protection, the parties may incorporate their agreement in the stipulated protective order submitted to the court.

14. MISCELLANEOUS

14.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek its modification by the court in the future.

14.2 Right to Assert Other Objections. By stipulating to the entry of this Protective Order no Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Stipulated Protective Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of the material covered by this Protective Order.

14.3 Omitted.

14.4 Filing Protected Material. Without written permission from the Designating Party or a court order secured after appropriate notice to all interested persons, a Party may not file in the public record in this action any Protected Material. A Party that seeks to file under seal any Protected Material must comply

with Civil Local Rule 79-5 and General Order 62. Protected Material may only be filed under seal pursuant to a court order authorizing the sealing of the specific Protected Material at issue. Pursuant to Civil Local Rule 79-5 and General Order 62, a sealing order will issue only upon a request establishing that the Protected Material at issue is privileged, protectable as a trade secret, or otherwise entitled to protection under the law. If a Receiving Party's request to file Protected Material under seal pursuant to Civil Local Rule 79-5(d) and General Order 62 is denied by the court, then the Receiving Party may file the Protected Material in the public record pursuant to Civil Local Rule 79-5(e) unless otherwise instructed by the court.

14.5 Privilege Logs. The parties shall exchange their respective privilege document logs that relate to a particular installment in their production of documents 45 days after completion of production of that installment. Neither Party is required to log information sent or received by Counsel relating to this litigation at any time. Plaintiff need not log information sent or received by or between Plaintiff and his outside counsel during the investigation of the claims prior to filing this lawsuit.

14.6 Communications with Experts. Testifying experts shall not be subject to discovery of any draft of their reports or disclosures in this case and such draft reports, notes, outlines, or any other writings leading up to an issued report(s) in this litigation are exempt from discovery, regardless of the form in which such is recorded. In addition, all communications (regardless of the form) among Counsel for a Party, a Party's consulting experts, and that Party's testifying Expert, and all materials generated by a testifying Expert with respect to that person's work, are exempt from discovery unless they relate to the Expert's compensation or identify facts, data or assumptions relied upon by the Expert in forming any opinions in this litigation and such information is not already disclosed in the Expert's report.

15. FINAL DISPOSITION

Within 60 days after the final disposition of this action, as defined in paragraph 4, each Receiving Party must return all Protected Material to the Producing Party or destroy such material. As used in this subdivision, "all Protected Material" includes all copies, abstracts, compilations, summaries, and any other format reproducing or capturing any of the Protected Material. Whether the Protected Material is returned or destroyed, the Receiving Party must submit a written certification to the Producing Party (and, if not the same person or entity, to the Designating Party) by the 60-day deadline that (1) identifies (by category, where appropriate) all the Protected Material that was returned or destroyed and (2) affirms that

the Receiving Party has not retained any copies, abstracts, compilations, summaries or any other format reproducing or capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts, legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work product, even if such materials contain Protected Material. Any such archival copies that contain or constitute Protected Material remain subject to this Protective Order as set forth in Section 4 (DURATION).

16. In the event of any discovery or disclosure dispute, the parties and any affected non-parties shall comply with the undersigned's Standing Order re Civil Discovery Disputes.

IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

DATED: November 9, 2012 Respectfully submitted,

KESSLER TOPAZ MELTZER & CHECK, LLP

By: /s/ Ryan T. Degnan

Ryan T. Degnan

NIX, PATTERSON & ROACH, LLP

By: /s/ Brad E. Seidel

Brad E. Seidel

Interim Co-Lead Class Counsel

DATED: November 9, 2012 **MAYER BROWN LLP**

By: /s/ Edward D. Johnson

Edward D. Johnson

Counsel for Defendant, Google Inc.

The filer attests that concurrence in the filing of this document has been obtained from Messrs. Ryan T. Degnan and Brad E. Seidel for Plaintiff.

AS MODIFIED BY THE COURT,
PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED: **December 5, 2012**


Howard R. Lloyd
United States Magistrate Judge

EXHIBIT AACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____
 [print or type full address], declare under penalty of perjury that I have read in its entirety and understand
 the Stipulated Protective Order that was issued by the United States District Court for the Northern District
 of California on [date] in the case of _____ **[insert formal name of the case and the number and
 initials assigned to it by the court]**. I agree to comply with and to be bound by all the terms of this
 Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to
 sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any
 manner any information or item that is subject to this Stipulated Protective Order to any person or entity
 except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the
 Northern District of California for the purpose of enforcing the terms of this Stipulated Protective Order,
 even if such enforcement proceedings occur after termination of this action.

I hereby agree to accept service of all legal process by US Mail or overnight delivery of
 such service at the above address or any other address at which I may be found.

Date: _____

City and State where sworn and signed: _____

Printed name: _____
 [printed name]

Signature: _____
 [signature]